

Petitioner owns two properties which can best be described as historic sites. One is the former Parks Clothing Building (hereinafter “the Parks Building”) and the other is a property known as the Butler Building, collectively the Parks Clothing Building and the Butler Building (hereinafter “the Property”). Before the court is a certiorari petition challenging the action of the City Council of Dahlonega when it found that the Historic Preservation Commission (hereinafter “HPC”) of the city did not abuse its discretion by denying a certain certificate of

appropriateness. Legal descriptions of the Parks Building and the Butler Building are attached as Exhibits A and B.

In point is a request for a certificate of appropriateness for the demolition of the Butler Building and construction of a new building made to the HPC. That request was denied by the HPC. An appeal was then made by the applicant to the City Council per the requirements of the ordinance requesting reversal of the decision made by the HPC. The City Council denied the appeal which asserted that the HPC had abused its discretion by its actions.

In lieu of a response to the petition for certiorari the City filed a motion to dismiss and an accompanying brief. No other pleadings have been filed other than the Petitioner filed a brief in response to the City's motion to dismiss.

After the initial pleadings and response occurred the parties then participated in numerous informal discussions. Those discussions have resulted in a settlement of the matter which the parties request to be made an order of the Court.

II.

Findings

1. This Court has jurisdiction over the subject matter of this case and the parties consenting hereto. Venue is proper in this Court.
2. The litigation being settled pursuant to this Consent Order is a certiorari petition based upon the denial by the City Council of Dahlonaga of an appeal made by the Petitioner from the decision of the Historic Preservation Commission which declined to grant a Certificate of Appropriateness to the Petitioner for the purpose of demolition of the Butler Building.

3. The parties by consenting to this Order waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order, and have further waived and released any claim they may have against one another, their employees, agents, attorneys and elected officials.
4. Entry of this Order is in the public interest.

III.

Order

**THE PARTIES HAVING CONSENTED TO THE ENTRY OF THIS ORDER, IT IS
HEREBY CONSIDERED, ORDERED AND ADJUDGED AS FOLLOWS:**

- (1) The Property is hereby approved for demolition of the existing structures including without limitation all prior conditions incident to demolition of the Parks Building.
- (2) The contents of this Order shall constitute Certificates of Appropriateness in lieu of HPC approval thereby allowing the Petitioner to pursue building permits from the City of Dahlonaga for only hotel and related accessory uses of the Property (hotel, parking deck, restaurant and pool). The zoning map of the City shall be noted to reflect that the Property is subject to the conditions of this Order.

AND IT IS FURTHER ORDERED THAT:

Roberta Green-Garrett, her successors, assigns, officers, agents, servants, employees, contractors, and those persons in active concert or participation with them, whether acting directly or through any corporation, subsidiary, division, or other device are permanently

restrained and enjoined from the following or assisting others, either expressly or by implication, orally or in writing, from acting in any manner inconsistent with the following requirements.

(1) In connection with the construction of the Property as a hotel:

(a) The hotel shall be limited to a maximum number of guestrooms and suites estimated as 75, but to be determined as a function of other required design elements consistent with the City's regulations, including parking, such total to consist of a mixture of no fewer than three suites, no fewer than ten king rooms and the balance shall be double queen rooms; the square footage per room shall be no less than 280 square feet.

(b) The rooms to be constructed along the right-of-way of East Main Street shall be served by central heat and air-conditioning. In room units are expressly prohibited for those rooms fronting on East Main Street.

(c) Included within the hotel shall be an exercise facility or work-out room with equipment.

(d) The hotel shall include a lobby and business office area.

(e) An outdoor swimming pool shall be included on the hotel property.

(f) The height of the building shall not exceed 36.2 feet as measured by the method utilized in Ordinance 91-9 of the City of Dahlonega.

(g) The size of the meeting space allocated in the hotel shall be a minimum of 1,000 square feet with unobstructed views, designed and constructed consistent with IACC (International Association of Conference Centers) standards.

(h) Onsite parking in accordance with Ordinance 91-9 shall be provided.

(i) Approval by the City of the site plan and working drawings shall be a condition precedent to permitting and also to demolition of the existing structures and commencement of the new construction. The hotel shall be constructed in conformance with the design presented in the Additional Requirements and rendering attached thereto the same being appended to this order as Exhibit C. Any design plans approved shall further require: (1) the façade treatment utilized fronting Main Street at the corner of East Main and Meaders Street to be continued along the full length of the Meaders Street frontage and (2) the utilization of a three foot air gap between any new construction and the existing building owned by the City of Dahlonega and Lumpkin County, i.e. the building housing the Chamber of Commerce and the Welcome Center.

(j) The construction of the hotel shall be in compliance with all building codes and other regulations of the City of Dahlonega except as may be in conflict herewith.

(k) The otherwise required off-street loading pursuant to Ordinance 91-9 can be performed by the use of existing city designated loading zones.

(l) Dumpsters may be accommodated on adjacent property of the owner, provided an access easement for the perpetual benefit of the hotel is recorded.

(2) In connection with the operation of the Property as a hotel:

(a) There will be a daily operated breakfast lounge area serving at a minimum, a continental breakfast, each day to all guests.

(b) The hotel shall at all times be operated pursuant to a franchise agreement with a national hospitality company and the hotel shall have a 3 Star rating or higher.

IT IS SO ORDERED THIS _____ day of _____, 2018.

JUDGE, SUPERIOR COURT OF
LUMPKIN COUNTY

Consented to by:

Roberta Green-Garrett

By: _____
Joseph A. Homans
State Bar No. 364647
Attorney for Petitioner
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City of Dahlonega, Georgia

By: _____
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The City Council of Dahlonega, Gary McCullough,
Mayor, Roman Gaddis, Post 1 Council Member,
Mitchell Ridley, Post 3 Council Member, Bruce
Hoffman, Post 4 Council Member, Ron Larson,
Post 5 Council Member

By: _____

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Draft for Discussion Purposes Only

EXHIBIT A

(To be inserted later)

EXHIBIT B

(To be inserted later)

EXHIBIT C

The building constructed on the Property shall comply with the following additional requirements:

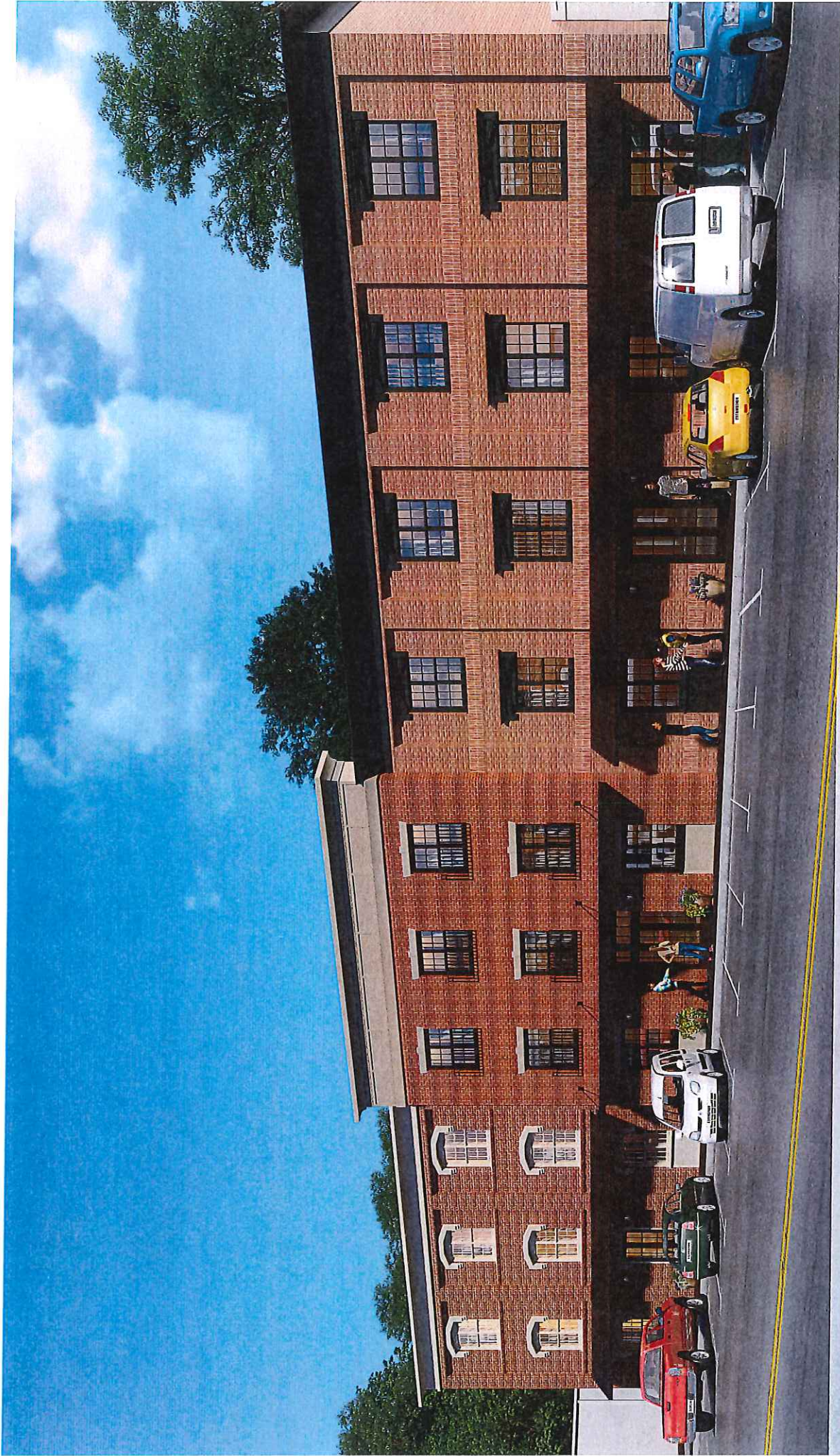
- (1) Use non-painted face brick (not veneer) on exterior wall elevations paralleling Main Street, Meaders Street, Choice Street and Park Street.
- (2) Provide three distinct façade treatments along East Main street consistent with the attached colored rendering by Hansen incorporated herein by reference to represent three different periods of historic construction styles. Each treatment as noted on the attached rendering shall be capped in a different style parapet/cornice/entablature corresponding with the architectural period of the brick treatment. The three distinct façade treatments as noted on the attached rendering vary by brick color, type, articulations, bonding courses, mortar joints and may vary by brick size. Each treatment shall have different window trim styles with corresponding stone or pre-cast window cornices. Windows shall not be flush mounted to the exterior wall face and shall not be painted or enamel-covered metal. The center façade treatment shall project two feet or more from the front face of the treatments on either side. All three treatments shall have distinguishably different awnings or canopies.
- (3) Have a façade treatment for the corner of East Main at Meaders that shall extend along Meaders Street and wrap the corner at Choice to terminate at a logical point. The façade treatment adjacent to the jointly owned City-County building (housing the Chamber and Visitor's Center) shall extend along the wall paralleling Park Street and wrap to the rear to terminate at a logical point.
- (4) Position mechanical equipment on the roof at the midline of the building or hidden by the central façade treatment's extended parapet to the maximum degree possible, so as to minimize visual clutter in the historic district.

The building may:

- (1) Utilize a consistent manner of lighting the entrances to each façade treatment or may vary these to better match the intended historic period of the varying façade treatments.
- (2) Add properly sized wooden shutters, which have the appearance of being functional, but are not required to be so, with hinges and shutter dogs to one or two of the façade treatments.
- (3) Utilize wood and post style awning or canopy for one or two of the façade treatments.

The site shall:

- (1) Have no more than one parking lot or deck entrance from Meaders Street
- (2) Have no more than one parking lot or deck entrance from Choice Street
- (3) Provide required tree-planting and landscaped areas along the sides, rear or front of the building
- (4) Use brick pavers in sidewalks along Main, Meaders and Choice in designs similar to the sidewalks in the historic commercial district.



Main Street Hotel